

AMENDED IN SENATE JULY 2, 2008
AMENDED IN SENATE JUNE 18, 2008
AMENDED IN ASSEMBLY MAY 22, 2008
AMENDED IN ASSEMBLY MAY 6, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2280

Introduced by Assembly Members Saldana and Caballero

February 21, 2008

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2280, as amended, Saldana. Density bonus.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or the donation of land within the development if the developer, among other things, agrees to construct a specified percentage of units for low-, very low, or moderate-income households or qualifying residents.

This bill would impose certain procedures on the application for a density bonus and other incentives or concessions.

The bill would require a city, county, or city and county to grant a concession or incentive requested by the applicant under existing law unless the city, county, or city and county makes a written finding,

based upon substantial evidence, that, among other things, the concession or incentive would be contrary to state or federal law.

The bill would delete a requirement that an applicant for a waiver or reduction of development standards show that the waiver or modification is necessary to make proposed housing units economically feasible.

The bill would require, as a condition for the granting of a density bonus to a developer in exchange for donating land to a city, county, or city and county for very low income housing, that the local agency identify a source of funding for the very low income units.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65915 of the Government Code is
2 amended to read:

3 65915. (a) (1) A city, county, or city and county shall comply
4 ~~with the provisions of this section. An applicant may seek a density~~
5 ~~bonus for a housing development with five or more units. A city,~~
6 ~~county, or city and county shall grant a density bonus in accordance~~
7 ~~with the provisions of this section and, when a density bonus is~~
8 ~~requested, shall also provide the applicant incentives or concessions~~
9 ~~with this section. When an applicant seeks a density bonus for a~~
10 ~~housing development within, or for the donation of land for housing~~
11 ~~within, the jurisdiction of a city, county, or city and county, that~~
12 ~~local government shall provide the applicant with incentives or~~
13 ~~concessions for the production of housing units and child care~~
14 ~~facilities as prescribed in this section.~~ If

15 (A) ~~If a housing development requires a discretionary approval,~~
16 ~~the applicant for the housing development shall indicate whether~~
17 ~~the applicant is seeking a density bonus and incentives or~~
18 ~~concessions pursuant to this section no later than the date the~~
19 ~~application for the first discretionary approval for the housing~~
20 ~~development is submitted. Any request for a density bonus and~~
21 ~~incentives or concessions shall be reviewed concurrently with the~~
22 ~~required discretionary approvals. No request may be made for a~~
23 ~~density bonus and incentives or concessions after the date the~~
24 ~~application for the first discretionary approval for the housing~~
25 ~~development has been submitted, unless permitted by local~~
26 ~~ordinance or unless no discretionary approvals were required for~~

1 ~~the housing development. All cities, counties, or cities and counties~~
2 *shall indicate the amount of any density bonus included in the*
3 *project and any incentives or concessions that are being requested,*
4 *prior to the project's first discretionary approval.*

5 *(B) If the city, county, or city and county thereafter requires*
6 *changes to the housing development that affect the applicant's*
7 *ability to provide for affordable housing cost, as defined in Sections*
8 *50052.5 and 50053 of the Health and Safety Code, or for rents or*
9 *sale prices for the targeted units to be set as specified in*
10 *subdivision (c), the applicant may modify the project's density*
11 *bonus and modify a request for incentives or concessions. The city,*
12 *county, or city and county shall grant the density bonus and, unless*
13 *it makes the findings in paragraph (1) of subdivision (d), grant*
14 *the requested incentives or concessions.*

15 *(2) If the housing development requires no discretionary*
16 *approval, the applicant shall indicate the amount of any density*
17 *bonus included in the project and any incentives or concessions*
18 *that are being requested, prior to the project's final approval.*

19 *(3) All cities, counties, or cities and counties shall adopt an*
20 *ordinance that specifies how compliance with this section will be*
21 *implemented. Failure to adopt an ordinance shall not relieve a city,*
22 *county, or city and county from complying with this section.*

23 *(b) (1) A city, county, or city and county shall grant one density*
24 *bonus, the amount of which shall be as specified in subdivision*
25 *(f), and, if a density bonus is requested, incentives or concessions,*
26 *as described in subdivision (d), when an applicant for a housing*
27 *development seeks and agrees to construct a housing development,*
28 *excluding any units permitted by the density bonus awarded*
29 *pursuant to this section, that will contain at least any one of the*
30 *following:*

31 *(A) Ten percent of the total units of a housing development for*
32 *lower income households, as defined in Section 50079.5 of the*
33 *Health and Safety Code.*

34 *(B) Five percent of the total units of a housing development for*
35 *very low income households, as defined in Section 50105 of the*
36 *Health and Safety Code.*

37 *(C) A senior citizen housing development, as defined in Sections*
38 *51.3 and 51.12 of the Civil Code, or mobilehome park that limits*
39 *residency based on age requirements for housing for older persons*
40 *pursuant to Section 798.76 or 799.5 of the Civil Code.*

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(3) For the purposes of this section, “total units” or “total dwelling units” does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

~~(4) Notwithstanding paragraphs (1) to (3), inclusive, an applicant for a project in which 49 percent or more of the units will be affordable to households of low or very low income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code, may request concessions and incentives, as described in subdivision (d), without requesting a density bonus.~~

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing

1 agreement, unless it is in conflict with the requirements of another
2 public funding source or law. The following apply to the equity
3 sharing agreement:

4 (A) Upon resale, the seller of the unit shall retain the value of
5 any improvements, the downpayment, and the seller's proportionate
6 share of appreciation. The local government shall recapture any
7 initial subsidy, as defined in subparagraph (B), and its proportionate
8 share of appreciation, as defined in subparagraph (C), which
9 amount shall be used within five years for any of the purposes
10 described in subdivision (e) of Section 33334.2 of the Health and
11 Safety Code that promote home ownership.

12 (B) For purposes of this subdivision, the local government's
13 initial subsidy shall be equal to the fair market value of the home
14 at the time of initial sale minus the initial sale price to the
15 moderate-income household, plus the amount of any downpayment
16 assistance or mortgage assistance. If upon resale the market value
17 is lower than the initial market value, then the value at the time of
18 the resale shall be used as the initial market value.

19 (C) For purposes of this subdivision, the local government's
20 proportionate share of appreciation shall be equal to the ratio of
21 the local government's initial subsidy to the fair market value of
22 the home at the time of initial sale.

23 (d) (1) An applicant for a density bonus pursuant to subdivision
24 (b) may submit to a city, county, or city and county a proposal for
25 the specific incentives or concessions that the applicant requests
26 pursuant to this section, and may request a meeting with the city,
27 county, or city and county. The city, county, or city and county
28 shall grant the concession or incentive requested by the applicant
29 unless the city, county, or city and county makes a written finding,
30 based upon substantial evidence, of any of the following:

31 (A) The concession or incentive is not required in order to
32 provide for affordable housing costs, as defined in Section 50052.5
33 of the Health and Safety Code, or for rents for the targeted units
34 to be set as specified in subdivision (c).

35 (B) The concession or incentive would have a specific adverse
36 impact, as defined in paragraph (2) of subdivision (d) of Section
37 65589.5, upon public health and safety or the physical environment
38 or on any real property that is listed in the California Register of
39 Historical Resources and for which there is no feasible method to
40 satisfactorily mitigate or avoid the specific adverse impact without

1 rendering the development unaffordable to low- and
2 moderate-income households.

3 (C) The concession or incentive would be contrary to state or
4 federal law.

5 (2) The applicant shall receive the following number of
6 incentives or concessions:

7 (A) One incentive or concession for projects that include at least
8 10 percent of the total units for lower income households, at least
9 5 percent for very low income households, or at least 10 percent
10 for persons and families of moderate income in a common interest
11 development.

12 (B) Two incentives or concessions for projects that include at
13 least 20 percent of the total units for lower income households, at
14 least 10 percent for very low income households, or at least 20
15 percent for persons and families of moderate income in a common
16 interest development.

17 (C) Three incentives or concessions for projects that include at
18 least 30 percent of the total units for lower income households, at
19 least 15 percent for very low income households, or at least 30
20 percent for persons and families of moderate income in a common
21 interest development.

22 (3) The applicant may initiate judicial proceedings if the city,
23 county, or city and county refuses to grant a requested density
24 bonus, incentive, or concession. If a court finds that the refusal to
25 grant a requested density bonus, incentive, or concession is in
26 violation of this section, the court shall award the plaintiff
27 reasonable attorney's fees and costs of suit. Nothing in this
28 subdivision shall be interpreted to require a local government to
29 grant an incentive or concession that has a specific, adverse impact,
30 as defined in paragraph (2) of subdivision (d) of Section 65589.5,
31 upon health, safety, or the physical environment, and for which
32 there is no feasible method to satisfactorily mitigate or avoid the
33 specific adverse impact. Nothing in this subdivision shall be
34 interpreted to require a local government to grant an incentive or
35 concession that would have an adverse impact on any real property
36 that is listed in the California Register of Historical Resources.
37 The city, county, or city and county shall establish procedures for
38 carrying out this section, that shall include legislative body
39 approval of the means of compliance with this section.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant *density as of the date of application by the applicant* to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

	Percentage Low-Income Units	Percentage Density Bonus
1		
2	10	20
3	11	21.5
4	12	23
5	13	24.5
6	14	26
7	15	27.5
8	17	30.5
9	18	32
10	19	33.5
11	20	35

12
 13 (2) For housing developments meeting the criteria of
 14 subparagraph (B) of paragraph (1) of subdivision (b), the density
 15 bonus shall be calculated as follows:

	Percentage Very Low Income Units	Percentage Density Bonus
16		
17		
18	5	20
19	6	22.5
20	7	25
21	8	27.5
22	9	30
23	10	32.5
24	11	35

25
 26 (3) For housing developments meeting the criteria of
 27 subparagraph (C) of paragraph (1) of subdivision (b), the density
 28 bonus shall be 20 percent of the number of senior housing units.

29 (4) For housing developments meeting the criteria of
 30 subparagraph (D) of paragraph (1) of subdivision (b), the density
 31 bonus shall be calculated as follows:

	Percentage Moderate-Income Units	Percentage Density Bonus
32		
33		
34	10	5
35	11	6
36	12	7
37	13	8
38	14	9
39	15	10
40	16	11

1	17	12
2	18	13
3	19	14
4	20	15
5	21	16
6	22	17
7	23	18
8	24	19
9	25	20
10	26	21
11	27	22
12	28	23
13	29	24
14	30	25
15	31	26
16	32	27
17	33	28
18	34	29
19	35	30
20	36	31
21	37	32
22	38	33
23	39	34
24	40	35

25
26 (5) All density calculations resulting in fractional units shall be
27 rounded up to the next whole number. The granting of a density
28 bonus shall not be interpreted, in and of itself, to require a general
29 plan amendment, local coastal plan amendment, zoning change,
30 or other discretionary approval.

31 (g) (1) When an applicant for a tentative subdivision map,
32 parcel map, or other residential development approval donates
33 land to a city, county, or city and county in accordance with this
34 subdivision, the applicant shall be entitled to a 15-percent increase
35 ~~above the otherwise maximum allowable residential density under~~
36 ~~the applicable zoning ordinance and land use element of the general~~
37 ~~plan for the entire development, as follows:~~ *above the otherwise*
38 *maximum allowable residential density for the entire development,*
39 *as follows:*

	Percentage Very Low Income	Percentage Density Bonus
1		
2	10	15
3	11	16
4	12	17
5	13	18
6	14	19
7	15	20
8	16	21
9	17	22
10	18	23
11	19	24
12	20	25
13	21	26
14	22	27
15	23	28
16	24	29
17	25	30
18	26	31
19	27	32
20	28	33
21	29	34
22	30	35

23
24 (2) This increase shall be in addition to any increase in density
25 mandated by subdivision (b), up to a maximum combined mandated
26 density increase of 35 percent if an applicant seeks an increase
27 pursuant to both this subdivision and subdivision (b). All density
28 calculations resulting in fractional units shall be rounded up to the
29 next whole number. Nothing in this subdivision shall be construed
30 to enlarge or diminish the authority of a city, county, or city and
31 county to require a developer to donate land as a condition of
32 development. An applicant shall be eligible for the increased
33 density bonus described in this subdivision if all of the following
34 conditions are met:

35 (A) The applicant donates and transfers the land no later than
36 the date of approval of the final subdivision map, parcel map, or
37 residential development application.

38 (B) The developable acreage and zoning classification of the
39 land being transferred are sufficient to permit construction of units
40 affordable to very low income households in an amount not less

1 than 10 percent of the number of residential units of the proposed
2 development.

3 (C) The transferred land is at least one acre in size or of
4 sufficient size to permit development of at least 40 units, has the
5 appropriate general plan designation, is appropriately zoned with
6 appropriate development standards for development at the density
7 described in paragraph (3) of subdivision (c) of Section 65583.2,
8 and is or will be served by adequate public facilities and
9 infrastructure.

10 (D) The transferred land shall have all of the permits and
11 approvals, other than building permits, necessary for the
12 development of the very low income housing units on the
13 transferred land, not later than the date of approval of the final
14 subdivision map, parcel map, or residential development
15 application, except that the local government may subject the
16 proposed development to subsequent design review to the extent
17 authorized by subdivision (i) of Section 65583.2 if the design is
18 not reviewed by the local government prior to the time of transfer.

19 (E) The transferred land and the affordable units shall be subject
20 to a deed restriction ensuring continued affordability of the units
21 consistent with paragraphs (1) and (2) of subdivision (c), which
22 shall be recorded on the property at the time of the transfer.

23 (F) The land is transferred to the local agency or to a housing
24 developer approved by the local agency. The local agency may
25 require the applicant to identify and transfer the land to the
26 developer.

27 (G) The transferred land shall be within the boundary of the
28 proposed development or, if the local agency agrees, within
29 one-quarter mile of the boundary of the proposed development.

30 (H) A proposed source of funding for the very low income units
31 shall be identified not later than the date of approval of the final
32 subdivision map, parcel map, or residential development
33 application.

34 (h) (1) When an applicant proposes to construct a housing
35 development that conforms to the requirements of subdivision (b)
36 and includes a child care facility that will be located on the
37 premises of, as part of, or adjacent to, the project, the city, county,
38 or city and county shall grant either of the following:

1 (A) An additional density bonus that is an amount of square
2 feet of residential space that is equal to or greater than the amount
3 of square feet in the child care facility.

4 (B) An additional concession or incentive that contributes
5 significantly to the economic feasibility of the construction of the
6 child care facility.

7 (2) The city, county, or city and county shall require, as a
8 condition of approving the housing development, that the following
9 occur:

10 (A) The child care facility shall remain in operation for a period
11 of time that is as long as or longer than the period of time during
12 which the density bonus units are required to remain affordable
13 pursuant to subdivision (c).

14 (B) Of the children who attend the child care facility, the
15 children of very low income households, lower income households,
16 or families of moderate income shall equal a percentage that is
17 equal to or greater than the percentage of dwelling units that are
18 required for very low income households, lower income
19 households, or families of moderate income pursuant to subdivision
20 (b).

21 (3) Notwithstanding any requirement of this subdivision, a city,
22 county, or a city and county shall not be required to provide a
23 density bonus or concession for a child care facility if it finds,
24 based upon substantial evidence, that the community has adequate
25 child care facilities.

26 (4) “Child care facility,” as used in this section, means a child
27 day care facility other than a family day care home, including, but
28 not limited to, infant centers, preschools, extended day care
29 facilities, and schoolage child care centers.

30 (i) “Housing development,” as used in this section, means a
31 development project for five or more residential units. For the
32 purposes of this section, “housing development” also includes a
33 subdivision or common interest development, as defined in Section
34 1351 of the Civil Code, approved by a city, county, or city and
35 county and consists of residential units or unimproved residential
36 lots and either a project to substantially rehabilitate and convert
37 an existing commercial building to residential use or the substantial
38 rehabilitation of an existing multifamily dwelling, as defined in
39 subdivision (d) of Section 65863.4, where the result of the
40 rehabilitation would be a net increase in available residential units.

1 For the purpose of calculating a density bonus, the residential units
2 shall be on contiguous sites that are the subject of one development
3 application, *but do not have to be based upon individual*
4 *subdivision maps or parcels*. The density bonus shall be permitted
5 in geographic areas of the housing development other than the
6 areas where the units for the lower income households are located.

7 (j) The granting of a concession or incentive shall not be
8 interpreted, in and of itself, to require a general plan amendment,
9 local coastal plan amendment, zoning change, or other discretionary
10 approval. This provision is declaratory of existing law.

11 (k) For the purposes of this chapter, concession or incentive
12 means any of the following:

13 (1) A reduction in site development standards or a modification
14 of zoning code requirements or architectural design requirements
15 that exceed the minimum building standards approved by the
16 California Building Standards Commission as provided in Part 2.5
17 (commencing with Section 18901) of Division 13 of the Health
18 and Safety Code, including, but not limited to, a reduction in
19 setback and square footage requirements and in the ratio of
20 vehicular parking spaces that would otherwise be required that
21 results in identifiable, financially sufficient, and actual cost
22 reductions.

23 (2) Approval of mixed use zoning in conjunction with the
24 housing project if commercial, office, industrial, or other land uses
25 will reduce the cost of the housing development and if the
26 commercial, office, industrial, or other land uses are compatible
27 with the housing project and the existing or planned development
28 in the area where the proposed housing project will be located.

29 (3) Other incentives or concessions proposed by the developer
30 or the city, county, or city and county that result in identifiable,
31 financially sufficient, and actual cost reductions.

32 (l) Subdivision (k) does not limit or require the provision of
33 direct financial incentives for the housing development, including
34 the provision of publicly owned land, by the city, county, or city
35 and county, or the waiver of fees or dedication requirements.

36 (m) Nothing in this section shall be construed to supersede or
37 in any way alter or lessen the effect or application of the California
38 Coastal Act (Division 20 (commencing with Section 30000) of
39 the Public Resources Code).

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) “Development standard” includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) “Maximum allowable residential density” means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. *Where the density allowed under the zoning ordinance differs from the density allowed under the land use element of the general plan, the general plan density shall prevail.*

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide “onsite parking” through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request parking incentives or

1 concessions beyond those provided in this ~~section~~ *subdivision*
2 pursuant to subdivision (d).

3

4

5 **CORRECTIONS:**

6 **Text—Pages 2, 3, and 9.**

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